



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

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Date: March 9, 2007

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Uniform Issue List:

511.00-00

513.00-00

Legend:

M =

P =

Q =

R =

T =

X =

Dear :

We have considered your ruling request dated January 31, 2006 requesting a ruling on whether the sale of certain items by a tax-exempt organization results in taxable income under section 511 of the Code.

Facts:

M is a tax-exempt organization under section 501(c)(3) and is classified as a publicly supported organization under sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code. M is also the central parent organization of x subordinate organizations ("Affiliates"), all of which are also exempt from tax under section 501(c)(3) pursuant to a group exemption letter. M is operated primarily for the purpose of supporting, by making contributions and donations to, any charitable, educational, scientific or medical organization which is primarily concerned with education, research, detection, prevention, and treatment or study of breast cancer; as well as supporting education and research in breast cancer.

M's exempt purpose is to educate the general public about breast cancer as a life-threatening disease by promoting the message that early detection of breast cancer saves lives. M

promotes the benefits of early detection through various means, including: its website, P; its helpline, Q; community-based breast education, screening and treatment programs and a variety of educational materials designed to meet the breast health and breast cancer information needs of the population.

The educational materials offered by M cover the topics of general breast health, risk factors and prevention, early detection, diagnosis, treatment, after treatment, support issues, specific populations, and resources. The website offers a number of educational items, many of which are free and in prepared in languages other than English.

In addition to the educational materials, M also offers R merchandise via its website. R is the universal symbol of breast cancer. The color of R is also recognized as the universal color denoting breast cancer awareness. The merchandise ranges from apparel, jewelry and other items that can be worn to promote awareness and early detection of breast cancer. The items fall into five product lines: pins, apparel, home and office, jewelry and special gifts. All items held for sale by M are either the same color as R or display the R symbol.

Each item of merchandise offered for sale through M undergoes an evaluation for its relevance and appropriateness to M's mission, and its quality and intrinsic value to potential purchasers. Purchasers of R merchandise receive a bookmark providing M's recommended three-step approach to positive breast health. Purchases made through P, includes an emailed confirmation statement recommending regular screening for breast cancer as well as the toll-free number and website. In addition, all items include M's toll-free number and website either on the product package or as a package enclosure. These enclosures and statements are part of M's belief that constant reminders of the importance of early detection will reinforce good breast health practices among all women.

A select number of R merchandise is available year-round on the website P, semiannually through M's newsletter, and at events sponsored by M or its affiliates including the T events. M states that the sale of R merchandise at T events and at other affiliate fundraisers enriches and emotionally anchors the overall experience for participants by making a visible public statement by displaying or wearing R merchandise and creating opportunities to reinforce M's message of awareness and early detection.

#### Ruling Requested:

You have requested a ruling on whether the sale of merchandise by M and its affiliates constitutes an unrelated trade or business under section 513(a) of the Internal Revenue Code.

#### Law:

Section 511 of the Internal Revenue Code imposes an income tax on the unrelated business taxable income of an organization recognized as exempt under section 501(c)(3).

Section 513(a) of the Code defines the term 'unrelated trade or business' as meaning in the case of any organization subject to the tax imposed by section 511, any trade or business the conduct of which is not substantially related (aside from the need of organization for income or

funds or the use it makes of the profit derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501 (or in the case of an organization described in section 511(a)(2)(B)), to the exercise or performance of any purpose or function described in section 501(c)(3).

Section 1.513-1(d)(2) of the Income Tax Regulations provides that a trade or business is “related” to exempt purposes only where the conduct of the business activities has causal relationship to the achievement of exempt purposes (other than through the production of income). Further, it is “substantially related”, for purposes of section 513, only if the causal relationship is a substantial one. For this relationship to exist, the production or the performance of the services from which the gross income is derived must contribute importantly to the accomplishment of those purposes. Whether activities productive of gross income contribute importantly to the accomplishment of any purpose for which an organization is granted exemption depends in each case upon the facts and circumstances involved. Section 513(c) of the Code provides that an activity does not lose identity as a trade or business merely because it is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which may, or may not, be related to the exempt purposes of the organization.

Rev. Rul. 73-104, 1973-1 C.B. 263, holds that the sale of greeting card reproductions of art works by an art museum exempt from tax under section 501(c)(3) of the Code does not constitute unrelated trade or business. The art museum sold cards through a shop in the museum and through a catalogue which solicited mail orders. The rationale of the ruling is that the card sales contribute importantly to the achievement of the museum's exempt educational purposes by stimulating and enhancing public awareness, interest, and appreciation of art.

Rev. Rul. 73-105, 1973-1 C.B. 264, provides that the sales of a particular line of merchandise should be considered separately to determine their relatedness to the exempt purpose. The ruling holds that the sale by a museum of folk art reproductions of works from the museum's own collection and reproductions of artistic works from the collections of other art museums, as well as metal, wood, and ceramic copies of American folk art objects from its own collection and similar copies of art objects from other collections of art works do not constitute unrelated trade or business. The sale of these items contributed importantly to the achievement of the folk art museum's exempt educational purposes by making works of art familiar to a broader segment of the public, thereby enhancing the public's understanding and appreciation of art. In contrast, the ruling also holds that sales of scientific books and souvenir items relating to the city where the museum is located, do constitute unrelated trade or business.

#### Analysis:

The term “unrelated trade or business” essentially means any trade or business which is not substantially related (aside from the need of organization for income or funds) to an organization's exempt purpose. The question whether the sale of the R items sold by M and its affiliates contributes importantly to the organization's exempt purposes depends on the facts and circumstances involved. See section 1.513-1(d)(2) of the regulations.

M's exempt purpose is to eradicate breast cancer as a life-threatening disease by funding research, educating the public, and providing the funding necessary to support screening and treatment programs. Many items sold by M are inherently educational, providing information on breast cancer, related topics and resources.

In contrast, pursuant to section 513(c) of the Code and Rev. Rul. 73-105, the sale of each particular item of R merchandise must be considered separately to determine its relatedness to M's exempt purposes. M carries out its exempt purpose primarily through communicating its message that early detection of breast cancer saves lives. The R symbol is universally known as the symbol for breast cancer awareness. It is essentially a reminder of practicing positive breast health and early detection. Each item available for sale by M and its affiliates includes the R symbol, with the exception of two items, which are the same color as R. All items of merchandise sold include M's toll-free number and website address, either on the product package or as a package enclosure, where the purchaser can obtain additional information on breast cancer, the need for early detection and the practice of positive breast health. In addition, a bookmark is included with each order that lists the three-step approach for positive breast health.

The sale of R merchandise reminds and encourages those who wear, display or see the images, about breast cancer. The sale of these items further enhances M's message that early detection of breast cancer and positive breast health practice save lives and is, accordingly, related to the organization's exempt purposes. Accordingly, we conclude that the sale of these items is related to the organization's exempt purposes and is not subject to tax under section 511 of the Code.

#### Conclusion:

The sale of the items described above is related to the organization's exempt purposes and does not constitute an unrelated trade or business within the meaning of section 513 of the Code.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, Notice of Intention to Disclose. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. Because it could help resolved questions concerning your federal income tax status, this ruling should be kept in your permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Debra J. Kaweck  
Manager, Exempt Organizations  
Technical Group 2

Enclosure  
Notice 437